

Office Action Summary

Application No.

10/664,197

Applicant(s)

SIMON, JEAN-CHRISTOPHE

Examiner

PEGAH PARVINI

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 and 42-52 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-40, 42, 43-52 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____

- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date: 20080728
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The rejection of claims 1 and 17 under 35 U.S.C. 112-second paragraph as being indefinite for failing to particularly pointing out and distinctly claim the subject matter which applicant regards as the invention because letters "C" and "M" are not defined in Figure 4 and thus, they lack sufficient antecedent basis for "C" and "M" in said claims is proper and stands.

Claim Rejections - 35 USC § 102

The rejection of claims 1, 9-13, 16-23, 26, 29-30, 32-34, 36-37, 39-40, 42, 44-47, 49, and 51-52 under 35 U.S.C 102(b) as being unpatentable by WO 00/75240 to Simon as generally set forth in the previous Office Action is proper and stands.

Claim Rejections - 35 USC § 103

The rejection of claims 2-3, 8 and 14-15 under 35 U.S.C. 103(a) as being unpatentable over Simon in view of US Patent No. 5,082,660 to Qunaian et al. as generally set forth in the previous Office Action is proper and stands.

The rejection of claims 4-5 under 35 U.S.C. 103(a) as being unpatentable over Simon in view of US Patent Application Publication No. 2003/0035883 to Nishikata et al. as generally set forth in the previous Office Action is proper and stands.

The rejection of claims 4 and 7 under 35 U.S.C. 103(a) as being unpatentable over Simon in view of US Patent Application Publication No. 2003/0147820 to Bertaux et al. as generally set forth in the previous Office Action is proper and stands.

The rejection of claim 6 under 35 U.S.C. 103(a) as being unpatentable over Simon in view of Nishikata et al. as applied to claim 4 and further in view of US Patent No. 5,635,574 to Aoyagi et al. as generally set forth in the previous Office Action is proper and stands.

Response to Arguments

Applicants have argued that since letters "C" and "M" are defined in the specification paragraph [0055], therefore, there is sufficient information provided for them in Figure 4.

The Examiner, respectfully, submits that claim 1 recites "...from a reference spectral reflectance C or M of skin as defined in Figure 4...."; thus, claim 1 is claiming certain features in Figure 4; whereas, Figure 4 does not define those features, namely letters "C" and "M".

Applicants are suggested to submit an amendment to Figure 4 which fully explains what "C" and "M" stand for and why they define in order to overcome the 112-second paragraph rejection based on the lack of sufficient antecedent basis for "C" and "M" as restated above.

Applicants have argued that WO 00/75240 to Simon does not teach particles having a top layer totally covering the underlying layer because said reference teaches fragment[ing] the coating.

The Examiner, respectfully, submits that, (1) Applicants have not provided sufficient and tangible proof to prove that in the final pigment particles of Simon, at least a top layer is not totally coating an underlying layer, (2) it appears that Applicants would like to make the impression that the instant application claims that the top layer totally encapsulate the underlying layer; whereas, the instant claims do not claim so and, in fact, even if such claim language is inserted, there is a lack of sufficient support and antecedent basis for it (encapsulation) in the specification.

Applicants have argued that the particles taught by Simon reference have a random assortment of shapes.

The Examiner, respectfully, submits that no tangible proof has been submitted for such conclusion being made by the Applicants.

The Examiner, further, appreciates the clarification regarding the statement "this fragmentation process would expose underlying coating layers", which was presented by Applicants as part of the disclosure of WO 00/75240 to Simon in the previous response to rejection.

In response to applicants' arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PEGAH PARVINI whose telephone number is (571)272-2639. The examiner can normally be reached on Monday to Friday 8:00am-4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. P./
Examiner, Art Unit 1793

/Jerry A Lorengo/
Supervisory Patent Examiner, Art
Unit 1793